

December 5, 1995

P.S. Protest No. 95-41

AMR DISTRIBUTION SYSTEMS

Solicitation No. 089480-A-0179

DIGEST

Protest against the award of contract for operation of repair and supply center is dismissed as untimely. Protester's contention that awardee's price was unrealistically low was known in sufficient time to allow timely protest; delay until subsequent debriefing was not justified.

DECISION

AMR Distribution Systems protests the award of a contract under solicitation 089480-A-0179 to DDD Company.

The Purchasing Service Center, Windsor, CT, issued solicitation A-0179 on March 31, 1995, seeking proposals for the operation of a critical parts center and repair facility in property leased by the Postal Service in Indianapolis, IN. At the time of the solicitation, similar services were being performed under an interim contract by AMR.

Section M of the solicitation, Contract Award and Proposal Evaluation, set out technical factors and point scores, as follows:

General Management		
Understanding Requirements	5	
Operations	5	
Staffing	5	
		15
Critical Parts Center		
CPC Operations	20	

CPC Implementation	10	30
Indianapolis Repair Facility		
IRF Operations	15	
IRF Implementation	15	30
Warehouse Management Systems, Training, Documentation		
WMS	10	
Implementation	10	
Training & Documentation	5	
		<u>25</u>
		100

Section M further provided as follows:

Award will be made to that offeror whose proposal contains the combination of those evaluation factors offering the best overall value to the Postal Service. This will be determined by comparing differences in the value of technical and management features with differences in cost to the Postal Service. In making this comparison the Postal Service is more concerned with obtaining superior technical or management features than with making an award at the lowest overall cost to the Postal Service. However, the Postal Service will not make an award at a significantly higher overall cost . . . to achieve slightly superior technical or management features.

The solicitation was distributed to eight firms which had been prequalified by the use of oral presentations. Five firms, including AMR, submitted technical proposals. Those proposals were evaluated and requests for best and final offers (BAFOs) were issued to the offerors.

AMR's BAFO had the highest technical score, at 98.90 points. DDD was second at 97.23 points. AMR's evaluated price was \$14.7 million. DDD's evaluated price was \$13.3 million. The contracting officer concluded that the difference in price between the two offers was greater than the technical or management advantages inherent in the AMR offer, and accordingly made award to DDD. Offerors were notified of the award by letters transmitted by facsimile on August 31, the date of award.¹

¹ Procurement Manual 4.2.5 i., Award Notification, sets out at subsection 1. five elements to be contained in a notice of award, as follows:

- (a) The number of proposals received.
- (b) The name and address of each offeror receiving an award.
- (c) The items, quantities, and unit prices of each award, or the total of estimated cost and fee for cost-reimbursement contracts.

AMR's protest, dated September 25 and received by this office September 28, makes the following points:

- AMR was unable to obtain a debriefing until September 22, at which time it learned of the basis for its protest.
- The Postal Service made an improper trade-off between technical and cost factors. AMR, as the incumbent, is experienced in providing these services, while the awardee has limited experience, and its price is so low, "compared to all other bidders, [sic] as to present a serious concern . . . whether their technical solution and pricing are realistic."²
- There is no urgency to any award under the solicitation since the Indianapolis operation "is currently functioning at a very high level of efficiency."

The contracting officer's statement responds to these issues as follows:

- The protest is untimely, since Procurement Manual (PM) 4.6.4 d. requires that protests be received within fifteen working days after contract award. September 22 was the last date within which a timely protest could be filed.
- There was adequate price competition here, since five offerors participated. The price/technical trade-off performed was fully consistent with the solicitation's provisions. All of the prequalified offerors had been determined capable of performing the services sought, and the slight difference in technical scores (1.67 points) between AMR and DDD was overcome by the significant price difference (\$1.4 million) between the offers. DDD's price offer was the subject of a "thorough review" to ensure that it was consistent with its technical proposal.

AMR responded to the contracting officer's statement with the following points:

- AMR sought a debriefing promptly by facsimile on "August [sic, September] 1," but the contracting officer did not schedule the debriefing until September 22. "We evaluated the information . . . and submitted our protest the very next workday."
- (d) If award was made without discussions, a statement to that effect; and
 - (e) A brief statement of the basis for the selection decision.

The notice of award which AMR received contained no information relating to DDD's price, and the "basis for the selection decision" was said to be "the best value to the U.S. Postal Service."

A subsequent letter dated September 14 advised AMR of the "evaluated dollar amount of the successful contractor" and of the "actual award amount."

² The offeror ranked third technically offered the second-lowest price. The remaining offerors had prices higher than AMR's price.

Equity should govern the timeliness of the protest, since AMR could not control when it received the information.

-- AMR does not challenge the prequalification of offerors or the adequacy of price competition, but continues to contend that the offer was not realistic. AMR notes that a major cost element was the parts facility, which was to stock ten to twelve times the number of repair items, and to ship three times the volume of the prior contract, requiring substantial additional staff. The difference in the labor proposals "would seem to be a major technical issue" which was not adequately reflected in the technical scoring. AMR contends that if DDD did not propose an adequate staff, as its price proposal suggests, it is unrealistic, and the contractor's subsequent demands for additional personnel will offset its perceived price advantage.

The contracting officer did not respond to AMR's further submission.

DISCUSSION

When an offeror is given the information sufficient to provide the basis for its protest only at its debriefing, a protest may be considered timely measured from the date of the debriefing, rather than from the earlier date of the adverse action which is the subject of the protest.

Travelco, Inc., P.S. Protest No. 91-10, March 21, 1991 (elimination from competitive range).

However, where the protester has knowledge of the basis for the protest prior to the debriefing, or where it fails to pursue aggressively the debriefing which will provide that basis, it may not postpone its protest until the debriefing. *Coopers & Lybrand*, P.S. Protest No. 89-91, March 21, 1990. Here, the protester's response blames the delay in the debriefing on the contracting officer and contends that the information on which its protest was based was not available until it was debriefed.

Since the initial notice of contract award, footnote 1, *supra*, did not disclose either DDD's offered price or the substance of the basis for the award, it did not provide AMR with a basis for its protest.³ However, AMR knew of the basis for its protest no later than its receipt of the September 14 letter disclosing DDD's evaluated price, since its contention is that that price was unrealistically low. *USA 800, Inc.*, P.S. Protest No. 89-90, February 15, 1990. Since this information was provided within the fifteen-working-day period after

³ *Anchorage Telephone Utility*, P.S. Protest No. 94-10, May 4, 1994, discussed the PM requirement that the notice of award discuss the basis for the selection decision, noting that a formulation no more specific than was used here "provides no meaningful information on the basis for award."

A more useful notification might have stated as follows:

DDD offered the lowest evaluated price and the second-highest-scored technical proposal, closely ranked to the highest-scored technical proposal, which was higher in price. The award was consistent with the solicitation's evaluation scheme, which, although it placed more emphasis on technical than on price factors, provided that slight technical advantages would not justify award at significantly greater cost.

contract award, the delay in AMR'S subsequent debriefing did not affect its ability to protest. Accordingly, its protest is untimely. We have no authority to disregard timeliness in a particular case even if, as the protester suggests, it would be equitable to do so. Cf. *IMPCO Technologies, Inc.*, P.S. Protest No. 94-13, June 29, 1994.

Were we to consider the merits of AMR's protest, however, we would be unable to provide it any relief. As in *Anchorage Telephone Utility, supra*, the protest, which questions the trade-off of price and technical factors between closely ranked proposals, involves technical determinations by the contracting officer and his evaluators.

[T]his office will not substitute its judgment for that of the technical evaluators, nor will we disturb the evaluation unless it is shown to be arbitrary or in violation of procurement regulations.

The determination of the relative merits of technical proposals is the responsibility of the contracting office, which has considerable discretion in making that determination. It is not the function of our office to evaluate technical proposals or resolve disputes on the scoring of technical proposals.

In reviewing a technical evaluation, we will not evaluate the proposal *de novo*, but instead will only examine the contracting officer's evaluation to ensure that it had a reasonable basis. The protester bears the burden of showing that the technical evaluation was unreasonable. A protester's mere disagreement with the contracting officer's judgment does not meet its burden of proving that the technical evaluation was unreasonable.

New Breed Corporations, P.S. Protest No. 93-20, October 21, 1993 (citations and internal quotations omitted). AMR's objections to the evaluation would be insufficient to meet its burden of proof.

The protest is dismissed.

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